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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,485	10/02/2003	Jim Peron	A3-1657	2484
27127	7590	03/22/2005	EXAMINER	
HARTMAN & HARTMAN, P.C. 552 EAST 700 NORTH VALPARAISO, IN 46383			TORRES, MELANIE	
		ART UNIT		PAPER NUMBER
		3683		

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

✓

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/605,485	PERON ET AL.	
Examiner	Art Unit		
Melanie Torres	3683		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 30 December 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 1-9 is/are allowed.

6)  Claim(s) 10 is/are rejected.

7)  Claim(s) 11-20 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
  - 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
  - 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date

- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Objections***

1. Claim 10 is objected to because of the following informalities: "lever" is misspelled in line 4 of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dugas.

Re claims 10-13 and 17-19 Dugas teaches wheelchair having a seat (38), multiple wheels (12), the braking devices comprising: a sensing lever (16) pivotably mounted to the wheelchair so that a first end of the sensing lever is movable in upward and downward directions while contacting the seat of the wheelchair, the sensing lever comprising means for engaging a wheelchair seat (36), braking means (18) slidably mounted relative to the wheelchair for engaging one of the wheels of the wheelchair, means for biasing (50) the braking means into engagement with the one wheel of the wheelchair, means for interconnecting (16a) the sensing lever and the braking means, the interconnecting means causing the biasing means to bias the first end of the

sensing lever in the upward direction, the interconnecting means causing the braking means to move out of engagement with the one wheel when the first end of the sensing lever is caused to move in the downward direction. However, Dugas does not teach having at least two braking devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a second brake since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

***Allowable Subject Matter***

4. Claims 1-9 are allowed.
5. Claims 11-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach a ling pivotably connected at a first end thereof to the sensing lever and pivotably connected at a second end thereof to the braking means.

***Response to Arguments***

7. Applicant's arguments filed December 30, 2004 have been fully considered but they are not persuasive.

Applicant argues wherein Dugas does not teach a "sensing lever comprising means for engaging a wheelchair seat" and that only the support member (36) engages the wheelchair seat. The examiner's position is that the sensing lever (16) engages the wheelchair seat (38) via the support member (36). Alternatively, "support member" can be interpreted as a portion of the claimed "seat" and would then be directly engaged to the lever (16).

Applicant further argues that the "interconnecting means" (16a) of Dugas cannot be interpreted as the claimed "interconnecting means" because there is no interconnection between the sensing lever (16) and the braking means (18). However, as defined by the claim language (last paragraph of claim 10), the pin (16a) functions as claimed. Without the "interconnection" of the pin, the sensing lever and braking means would not function. Further, the cavity (22) of Dugas is also capable of being the claimed "interconnecting means."

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Torres whose telephone number is (703)305-0293. The examiner can normally be reached on Monday-Friday, 6:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on (703)308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MT  
March 16, 2005

*Melanie Torres*  
3/16/05